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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**DEBTORS' CORRECTED OMNIBUS
(I) REPLY IN SUPPORT OF THE DEBTORS'
BAR DATE MOTION, AND (II) OBJECTION
TO THE TCC'S BAR DATE MOTION**

Re: Docket Nos. 1784 and 2297

Date: June 26, 2019
Time: 9:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102
Judge: Hon. Dennis Montali

PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Omnibus Reply (the “**Reply**”):

- A. in support of the *Motion of Debtors Pursuant to 11 U.S.C. §§ 502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005, and 9007, and L.B.R. 3003-1 for Order (i) Establishing Deadline for Filing Proofs of Claim, (ii) Establishing the Form and Manner of Notice Thereof, and (iii) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors* [Dkt. No. 1784] (the “**Bar Date Motion**”¹) and in response to the various objections filed with respect thereto (collectively, the “**Objections**” filed by the “**Objecting Parties**”²); and
- B. in opposition to the *Motion of the Official Committee of Tort Claimants Pursuant to 11 U.S.C. §§ 105(a), 501 and Fed. R. Bankr. P. 3001(a), 3003(c), 5005 and 9007 for Entry of an Order (i) Establishing a Bar Date for Filing Fire Claims, (ii) Approving the Form and Procedures for Notice of the Bar Date for Fire Claims, and (iii) Approving Supplemental Procedure for Notice of the Bar Date to Fire Claimants* [Dkt. No. 2297] (together with the supporting memorandum of law and declarations, the “**TCC Bar Date Motion**”).

In further support of the Bar Date Motion and this Reply, the Debtors submit the Supplemental Declaration of Shai Y. Waisman (the “**Supplemental Waisman Declaration**”) and the Declaration of Jeanne C. Finegan (the “**Finegan Declaration**” and, together with the Supplemental Waisman Declaration, the “**Supplemental Declarations**”), filed contemporaneously herewith.

¹ Capitalized terms used not otherwise defined herein have the meanings assigned to them in the Bar Date Motion.

² The Objections include, without limitation, the objections, limited objections, joinders, and other pleadings found at Dkt. Nos. 2043, 2238, 2239, 2240, 2242, 2248, 2256, 2306, 2307, 2308, 2316, 2321, 2324, 2326, 2346, and 2453.

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1 **I. PRELIMINARY STATEMENT**

2 In an effort to move these cases forward in an efficient and expeditious manner, the Debtors filed
3 the Bar Date Motion on May 1, 2019, and proposed an approach, including customized Wildfire
4 Claimant and Wildfire Subrogation Claimant Proof of Claims Forms, that allows for a single-step
5 process to both identify the number of Wildfire Claims that exist and obtain basic documentation
6 designed to enable all parties to assess those claims.

7 Since filing their Bar Date Motion, the Debtors have been working closely with the Objecting
8 Parties and other constituencies to address their concerns. As discussed below, the Debtors believe that
9 the overwhelming majority of the Objections have been resolved as a result of amendments to the
10 proposed Wildfire Proof of Claim Forms and the Bar Date Order. Notably, the Debtors have resolved
11 all issues with the Ad Hoc Subrogation Group on the proposed Wildfire Subrogation Claimant Proof of
12 Claim Form and related issues.

13 Unfortunately, due in large part to the actions of the TCC, the Debtors' efforts to establish a Bar
14 Date and otherwise move these cases forward in a timely and efficient manner have been delayed now
15 for over a month. Rather than working constructively with the Debtors, on May 31, 2019, some thirty
16 (30) days after the Debtors' Bar Date Motion was filed, the TCC filed their own Bar Date Motion with
17 its own proposed noticing program (the "**TCC Notice Program**") in which the TCC seeks, in essence,
18 to (a) delay the Bar Date to January 31, 2020; (b) usurp from the Debtors and their Court-appointed
19 noticing agent the claims noticing and proof of claim process; and (c) install a different noticing agent
20 with no chapter 11 experience of any kind and questionable credentials.

21 While the Debtors believed then—and continue to believe now—that their approach set forth in
22 the Bar Date Motion provides the most fair and efficient mechanism to resolve the core issues of the
23 extent and validity of all Wildfire Claims, the Debtors determined that decisive action must be taken to
24 avoid further unnecessary delays in the administration of these Chapter 11 Cases. To that end, as the
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1 Court is aware, the Debtors have agreed to adopt the TCC's summary Wildfire Proof of Claim Form³ —
2 thus rendering moot nearly all pending objections to the Debtors' Bar Date Motion and eliminating any
3 reasonable argument that the Bar Date should be delayed until January 31, 2020.⁴

4 Furthermore, although the Debtors are confident that their Noticing Procedures, including the
5 unprecedented, multi-faceted aspects of their Supplemental Notice Plan, which were developed and
6 reviewed by industry leaders and experts in both bankruptcy and class action noticing, are reasonably
7 calculated to provide more than adequate notice of the Bar Date to known and unknown claimants and
8 satisfy the requirements of due process of law, the Debtors, nevertheless incorporated certain additional
9 measures in their proposed Supplemental Notice Plan, including, as discussed in further detail below,
10 Over the Top TV, streaming radio, and Out-of-Home advertising. The Debtors believe that the Notice
11 Procedures (including, the Supplemental Notice Plan), as originally proposed, are reasonable, effective,
12 and go well-beyond the requirements of applicable law. These further refinements and adjustments only
13 add to what is already an exceptional noticing plan.

14 In contrast, as set forth below and in the Supplemental Declarations, the TCC Notice Plan is
15 excessive and wasteful, due, in part, to its unnecessary frequency levels, and is critically flawed in several
16 respects. This is not surprising since the TCC Notice Plan was developed by a firm with no prior
17 experience serving as a noticing agent or in any other capacity in *any* chapter 11 case, much less one of
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22 ³ The Debtors' willingness to adopt the TCC's Proof of Claim Form is by no means an admission or
23 acknowledgment that the information requested in the TCC Proof of Claim Form is sufficient.
24 Accordingly, the Debtors reserve all rights to take discovery with respect to, among other things, all
Wildfire Claims that are filed. Such processes may be critical to addressing what should be a shared
concern of all parties: the possibility of invalid or overstated claims, which undermines the fairness of
the entire process.

25 ⁴ Due to the TCC's failure to engage in good faith discussions on the sharing of information, the Debtors
26 understand that the UCC recently served formal discovery requests for the information set forth in the
27 so-called BrownGreer database – which the TCC has repeatedly insisted contains or will contain all of
28 the information parties could need to assess the Wildfire Claims, but which the TCC (and the various
plaintiffs' groups it represents) has refused to share with the Debtors or the UCC to date. The Debtors
support the UCC's efforts and believe the database should be made available to the Debtors and the UCC
promptly.

1 the size and complexity of these cases.⁵

2 A revised form of Bar Date Order (the “**Revised Bar Date Order**”), together with corresponding
3 notices and exhibits, is attached as **Exhibit A** hereto. In addition, a chart summarizing the Objections,
4 the Debtors’ responses and proposed modifications for resolving the Objections, and the Debtors’
5 position with respect to the remaining Objections is attached hereto as **Exhibit B** (the “**Summary**
6 **Chart**”). In addition to the amendments discussed above, as set forth in the Summary Chart, the Debtors
7 have, among other things, agreed to:

- 8 (i) add language to the Revised Bar Date Order making clear that any claimant that
9 makes a good faith effort to timely file a Proof of Claim Form in accordance with the
10 Revised Bar Date Order will be permitted to revise, amend, and/or supplement their
11 claim until such time as it is allowed or disallowed by the Court (*see* Rev. Bar Date
12 Order, at ¶ 4);
13 (ii) remove language to the effect that any claimant that fails to timely file a Proof of
14 Claim Form in accordance with the Bar Date Order will be forever barred, estopped,
15 and enjoined from asserting a claim against the Debtors (*see* Rev. Bar Date Order, ¶
16 7); and
17 (iii) eliminate the requirement that Wildfire Claimants re-file their claims using the
18 applicable Wildfire Proof of Claim Form to the extent they have already filed claims
19 using the Standard Form 410 (*see* Rev. Bar Date Order, at ¶¶ 3(e), (o)(6)).

20 The Debtors have addressed any remaining, outstanding Objections below. In addition, as set
21 forth in the Revised Bar Date Order, the Debtors are now requesting the Court set **October 21, 2019** as
22 the Bar Date, which, consistent with the procedures originally set forth in the Bar Date Motion, will
23 allow Claimants at least ninety-five (95) days to file Proofs of Claim.

24 As is made clear in the attached Summary Chart, as well as the Debtors’ adoption of the TCC
25 Wildfire Proof of Claim Form and other efforts to resolve concerns raised by the Objecting Parties, the
26 Debtors have made good faith efforts to move these cases forward and establish a reasonable Bar Date,
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28 ⁵ Contemporaneously hereto, the Debtors have filed an objection to the TCC’s application to retain
Angeion Group, LLC (“**Angeion**”), as fire claim bar date noticing agent on the grounds that, among
other things, (i) Angeion has no prior experience serving as a noticing agent or in any other capacity in
any chapter 11 case, (ii) Angeion’s notice experience in the class action arena (which, in any event, is
not relevant to these Chapter 11 Cases) is overstated, (iii) Angeion is not authorized to act as a noticing
agent for the Court, and (iv) Angeion’s appointment in these Chapter 11 Cases would only result in
duplication of efforts, unnecessary costs, further delay, and confusion.

1 which is fundamental to the filing of any chapter 11 plan and voting process. The Revised Bar Date
2 Order, Notice Procedures (including, the Supplemental Notice Plan), Bar Date Notices, and Proof of
3 Claim Forms are reasonable, narrowly tailored, comply with applicable law, and go above and beyond
4 the legal requirement of due process. In contrast, the TCC's Bar Date Motion, its attempts to needlessly
5 delay the Bar Date, retain its own unqualified claims agent, and its failure to engage in good-faith
6 discussions with the Debtors and UCC to resolve any and all substantive concerns, will serve only to
7 delay distributions to creditors, including holders of Wildfire Claims.

8 Accordingly, the Court should approve the Debtors' Bar Date Motion, as amended in accordance
9 with this Reply and the Revised Bar Date Order, and should deny approval of the TCC Bar Date Motion.

10 **II. THE REMAINING OBJECTIONS TO THE DEBTORS'**
11 **BAR DATE MOTION SHOULD BE OVERRULED**

12 **a. The Debtors' Proposed Bar Date is Reasonable, Appropriate, and Provides**
13 **Claimants with More Than Adequate Time to File Claims in these Chapter 11**
14 **Cases**

15 As set forth above and in the Revised Bar Date Order, the Debtors are now seeking to establish
16 October 21, 2019 as the Bar Date. Consistent with the procedures proposed in the Bar Date Motion, this
17 deadline will allow claimants at least 95 days to file Proofs of Claim (assuming entry of the Revised Bar
18 Date Order on or about June 26). The Debtors believe this period of time is more than adequate to allow
19 individuals, including known and unknown Wildfire Claimants, to file Proofs of Claim in these Chapter
20 11 Cases— especially in light of the Debtors' agreement to adopt the TCC's summary Wildfire Proof of
21 Claim Form. Moreover, as set forth in the Bar Date Motion, the Debtors' proposed notice period is
22 actually longer than notice periods approved by Courts in other mass tort cases. *See In re TK Holdings*
23 *Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del. Aug. 16, 2017) (approving 54-day bar date notice period
24 for personal injury and other claims); *In re Blitz U.S.S., Inc.*, Case No. 11-13603 (PJW) (Bankr. D. Del.
25 2011) [Dkt. No. 1619] (approving 61-day bar date notice period for personal injury claims that resulted
26 from defective gasoline cans); *In re Exide Techs.*, Case No. 02-11125 (KJC) (Bankr. D. Del. 2002) [Dkt.
27 No. 1989] (approving 52-day bar date for personal injury, property damage, and other claims relating to
28 exposure to lead and other heavy metals); *In re Suntech Am., Inc.*, Case No. 15-10054 (CSS) (Bankr. D.

1 Del. 2009) [Dkt. No. 86] (establishing 35-day bar date notice period for creditors, including products
2 liability, antitrust, breach of contract, and other commercial litigation claimants).

3 The TCC, however, argues in its Objection and in its own motion that the Bar Date should be set
4 no earlier than January 31, 2020. *See* Memorandum of Points and Authorities in Support of TCC Bar
5 Date Motion [Dkt. No. 2298] at 8:28; Dion Decl. [Dkt. No. 2300] at 4:18. The TCC’s proposed Bar
6 Date runs counter to the stated intentions of nearly every major constituency in these cases—namely,
7 moving these cases forward in an expeditious manner. Indeed, at the “first day” hearing, many of the
8 plaintiffs’ attorneys that represent significant numbers of Wildfire Claimants expressed the need to
9 resolve these Chapter 11 Cases quickly. *See* Hr’g Tr. (Jan. 31, 2019) at 79:25; 80:1-4 (Mr. Esserman:
10 “The public entities are very interested in getting a prompt resolution of this case which would be to
11 everyone’s benefit.”); 83:2-7 (Mr. Baghdadi: “Expeditious and fair orderly resolution of this process is
12 what [the fire victims] want to be a part of.”); and 84:4-11 (Mr. Pitre: “I ask that that exceptional talent,
13 together with your stewardship, Your Honor, insure that this process moves with a sense of urgency”).
14 Counsel for the TCC has made similar comments stating, “[w]e hear every week on our weekly [Tort
15 Committee] telephone calls about how this case must move expeditiously and be resolved within six
16 months.” Hr’g Tr. (May 8, 2019) at 53:11-13.

17 Furthermore, there is no practical reason to extend the Bar Date months past what has been
18 approved in other mass tort chapter 11 cases. The Court also should give no weight or regard to the
19 declaration of Jeffrey Dion submitted by the TCC in support for its proposed longer Bar Date. As is
20 plainly gleaned from his declaration, Mr. Dion has no knowledge or experience of any kind that is
21 relevant to these proceedings or the subject of the Bar Date Motion. The entirety of his declaration is
22 conjecture and speculation as he, admittedly, has had no contact or dealings with the victims of the
23 Northern California Wildfires and has no knowledge, basis, or experience relevant to any of his
24 assertions as to the proposed Bar Date. *See* Dion Decl. [Dkt. No. 2300] at 2:25-3:13.⁶ Moreover, it is
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26 ⁶ In order to further explore the experience of the individuals the TCC submitted as declarants in support
27 of the TCC Bar Date Motion, the Debtors sought depositions of Mr. Dion and Mr. Weisbrot to take place
28 before the June 26, 2019 hearing date. Counsel to the TCC stated that the declarants were not available
prior to the hearing. As set forth below, the declarations of Mr. Dion and Mr. Weisbrot should be stricken
based on their failure to provide depositions prior to the hearing upon timely notice by the Debtors.

1 clear from the face of the declaration that Mr. Dion is not being proposed as a fact witness, but instead
2 as an expert to provide his unsupported opinion that the Bar Date should not be set until January. Yet,
3 Mr. Dion provides none of the information required by the Federal Rules of Civil Procedure for an
4 expert. *See* Fed. R. Civ. P. 26(a)(2)(B). More critically, Mr. Dion's opinion is not supported by any
5 study or methodology and there is no peer review of any methodology. Thus, the opinion fails the most
6 basic requirements of reliability required under *Daubert* and should be stricken on that basis alone. *See*
7 *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 (1993); Fed. R. Evid. 702; *Kumho Tire Co. v.*
8 *Carmichael*, 526 U.S. 137, 140 (1999) (holding that the *Daubert* requirements of reliability apply to all
9 expert testimony, not just scientific testimony); *Barber v. City of Santa Rosa*, 2010 WL 5069868, 21
10 (N.D. Cal. 2010) (applying *Daubert* reliability standards to expert testimony by a veteran police officer
11 regarding the effects of a taser on the human body); *Feduniak v. Old Republic Nat'l Title Co.*, 2015 WL
12 1969369, 6-14 (N.D. Cal.) (excluding expert testimony as to diminution in property value due to lack of
13 reliability based on inability to independently verify the methodology, the fact that the methodology was
14 not peer reviewed, lack of evidence of error rate, lack of general acceptance of the methodology, and the
15 fact that the methodology was developed for the purpose of litigation). Indeed, even members of the
16 constituency the TCC represents support an earlier Bar Date. *See, e.g.*, Interested Paradise Parties
17 Objection [Dkt. No. 2240] at 5:27-28 (The Interested Paradise Parties "do not object to the setting of a
18 bar date in the timeframe proposed by the Debtors.").

19 Establishing a Bar Date as requested by the TCC will only further delay recoveries to Wildfire
20 Claimants and other creditors in these Chapter 11 Cases. The Debtors' proposed Bar Date is reasonable,
21 allows more than adequate time for claimants to file proofs of claims, is consistent with deadlines set by
22 Courts in similar chapter 11 contexts, and should be approved.

23 **b. The Debtors' Proposed Confidential Treatment of Wildfire Claims is Reasonable**
24 **and Warranted Under the Circumstances**

25 Due to the sensitive nature of the claims to be submitted by Wildfire Claimants, the Debtors have
26 proposed that Wildfire Claim information remain confidential and be shared only with the U.S. Trustee
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1 and Committees on a professionals' eyes only basis.⁷ The U.S. Trustee, however, has objected to the
2 proposed confidential treatment of Wildfire Claims arguing instead that the Debtors should eliminate
3 personally identifiable information, which it asserts would obviate the need for any sealing or
4 confidentiality provisions in the Bar Date Order. *See* U.S. Trustee Objection [Dkt. No. 2316] at 6:25-
5 7:3. As stated above, the Debtors have agreed to adopt the TCC's Wildfire Proof of Claim Form, thus
6 mooted the objection with respect to personally identifiable information. Nevertheless, the Debtors
7 believe confidential treatment of claim information is appropriate given the sensitive nature of the claims
8 and the damages asserted. Moreover, the Debtors believe that if such information were to be made
9 public, it may discourage Wildfire Claimants from submitting claims or otherwise providing the Debtors
10 with additional information or supporting documentation at a later date. Additionally, absent the
11 confidential treatment requested by the Debtors, information on individual losses, which the Ad Hoc
12 Subrogation Group has agreed should be provided in connection with Wildfire Subrogation Claimant
13 Proof of Claim Forms, may not otherwise be submitted due to confidentiality concerns for the underlying
14 claimants. Ad Hoc Subrogation Claimant Objection [Dkt. No. 2043] at 9:4-17.

15 As set forth in the Bar Date Motion, similar procedures have been approved in other cases. *See*
16 *USA Gymnastics*, Case No. 18-09108 (Bankr. S.D. IN Feb. 25, 2019) [Dkt. No. 301]; *In re Archdiocese*
17 *of Milwaukee*, Case No. 11-20059-svk (Bankr. E.D. Wisc. July 14, 2011) [Dkt. No. 331]; *In re Roman*
18 *Catholic Bishop of Great Falls Montana*, Case No. 17-60271 (Bankr. D. MT June 6, 2016) [Dkt. No.
19 121]. Accordingly, the Debtors believe that the proposed confidential treatment of Wildfire Claims is
20 reasonable and appropriate.

21 **c. The Debtors' Procedures to Provide Direct Notice to Known Wildfire Claimants**
22 **Go Above and Beyond the Requirements of Due Process and More than Satisfy the**
23 **Requirements under the Bankruptcy Code and Applicable Law**

24 The TCC asserts that the Debtors are proposing to provide direct notice to only a "select group
25 of parties in interest" notwithstanding the fact that the proposed list of parties to receive actual notice as

26 ⁷ At the request of the Ad Hoc Subrogation Group, the Debtors have clarified that this confidentiality
27 also extends to supplemental information submitted by the Subrogation Claimants regarding individual
28 losses. The Debtors have also agreed to carve out Wildfire Claims filed by the United States and any
California State Agency from these confidentiality restrictions, at the request of those parties. *See*
Revised Bar Date Order, at ¶ 6.

identified in Bar Date Motion, including Known Wildfire Claimants,⁸ totals nearly 18 million parties. As set forth in the Finegan Declaration, it is clear that, at best, the TCC and Angeion do not understand the size and scope of the Debtors' Notice Procedures and the Supplemental Notice Plan. Many of the TCC's pleadings contain information that is patently wrong, internally inconsistent, and ignore the reality of what the Debtors actually propose in their Bar Date Motion. When compared to the TCC Notice Plan, the Debtors' Noticing Procedures include virtually all of the same elements, including (a) direct notice via U.S. Mail and email, (b) supplemental notice via various print media publications; (c) constructive notice using the Internet and various targeted online media; (d) notice employing the use of social media; and (e) localized television and radio advertising. A chart detailing the extent of the overlap between the two plans is set forth below:

	Debtors' Original Supplemental Notice Plan	TCC Plan
Dedicated Website	YES	YES
Toll-Free Number	YES	YES
DIRECT MAIL/ EMAIL		
Known Wildfire Claimants	YES	YES
Debtors' Customers	YES	YES (but 2 million fewer Customers to receive notice by mail)
Property Owners of Destroyed Homes within the Areas affected by the 2017 Northern California Wildfires GIS Data	YES	YES
Additional Names of Wildfire Claimants in BrownGreer Database	YES	YES
PRINT		
Magazines	NO (Now incorporated into Revised Plan)	YES
Newspapers	YES	YES
BROADCAST		
Local Market TV – English & Spanish	YES	YES
Over the Top TV (OTT)	NO (Duplicative but nevertheless incorporated into Revised Plan)	YES
Local Market Radio – English & Spanish	YES	YES

⁸ As set forth in the Bar Date Motion, “**Known Wildfire Claimants**” means holders of Wildfire Claims that, as of the Petition Date, already had commenced actions against the Debtors or had provided actual notice to the Debtors of their intention to commence actions against the Debtors.

	NO (Duplicative but nevertheless incorporated into Revised Plan)	
Streaming Radio		YES
ONLINE		
Display	YES	YES
Search	YES	YES
Social Ads	YES	YES
OUT OF HOME		
	NO (Unnecessary and duplicative but nevertheless incorporated into Revised Plan)	
Digital & Static Units		YES
COMMUNITY OUTREACH		
Fire Disaster Centers/Claims Service Centers	YES	YES
EARNED MEDIA		
Public Relations Outreach	YES	YES

Finegan Decl. at ¶22.

As noted above and in the Bar Date Motion, in addition to parties who have already commenced actions against the Debtors or provided the Debtors with notice of their intention to do so, the Debtors will provide actual notice by first-class mail to (i) property owners they have been able to locate utilizing sophisticated GIS satellite data, (ii) parties that have already filed claims in these Chapter 11 Cases, (iii) if made available, individuals identified in the BrownGreer database, (iv) parties with forwarding addresses identified by the U.S. Postal Service,⁹ and (v) the Debtors' 16 million Customers. Although the TCC Bar Date Motion identifies additional categories of sources the TCC could potentially approach or request for additional Wildfire Claimant information (such as community organizations and utilizing third party subpoenas), this list is purely aspirational as neither the TCC nor Angeion sets forth any specific plan to secure any information from such parties in a timely manner. Furthermore, the TCC's own proposed bar date order does not expressly require them to seek out or serve any such additional parties. *See* TCC Proposed Order [Dkt. No. 2297-2]. Clearly the Debtors have gone above and beyond

⁹ The TCC also tries to fault the Debtors for not using the U.S. Postal Service Change of Address Database and verification searches (also known as skip tracing). These are services that Prime Clerk performs in virtually all cases and would be assumed, rather than highlighted as some extraordinary measure. Prime Clerk will not only be performing regular skip tracing, but also intends to utilize additional services to perform address look-up for all mail that is returned as undeliverable with no forwarding address. *See* Supp. Waisman Decl. at ¶16.

1 merely searching their books and records as the TCC suggests. *See* TCC Objection [Dkt. No. 2306] at
2 24:3-4. Indeed, the only material difference between the two direct mailing proposals appears to be the
3 TCC's intent to not provide actual notice by mail to approximately two million potential claimants in
4 clear violation of applicable law.¹⁰

5 Accordingly, the Debtors' Notice Procedures, and the efforts to identify and serve Known
6 Wildfire Claimants, are reasonable, far-reaching, and satisfy the requirements of due process and the
7 Bankruptcy Code.

8 **d. The Debtors' Supplemental Notice Plan to Reach "Unknown Claimants" has been**
9 **Meticulously Crafted by Industry Experts Using Preeminent Noticing Standards,**
10 **is Far-Reaching, Multi-Faceted, and Vastly Superior to that Proposed by the TCC**
11 **and Angeion**

12 The Debtors' Supplemental Notice Plan is reasonably calculated to provide adequate notice of
13 the Bar Date to unknown claimants, including Unknown Wildfire Claimants,¹¹ and satisfies the
14 requirements of due process. As set forth in the Supplemental Declarations, the Debtors' Supplemental
15 Notice Plan was developed and reviewed by professionals at Prime Clerk, with the assistance of Jeanne
16 C. Finegan, utilizing well-researched methodologies and communication principles accepted by the
17 advertising industry and embraced by courts in the United States for legal noticing. Furthermore, and in
18 contrast to Angeion's complete lack of chapter 11 experience, Prime Clerk, the Court-appointed noticing
19 agent in these Chapter 11 Cases, has a wealth of experience in a multitude of large and complex cases,
20 including extensive experience serving as claims and noticing agent in chapter 11 cases involving mass
21 tort and class action claims. *See, e.g., TK Holdings Inc.* (Takata), No. 17-11375 (BLS) (Bankr. D. Del.);
22 *In re Commonwealth of Puerto Rico*, No. 17-03283 (LTS) (Bankr. P.R.); *Imerys Talc America, Inc.*, No.
23 19-10289 (LSS) (Bankr. D. Del.); *In re Kaiser Gypsum Company, Inc.*, No. 16-31602 (JCW) (Bankr.

24 ¹⁰ Without any precedent or support, Angeion and the TCC propose to do away with the physical mailing
25 to some two million known claimants and instead provide them with notice via electronic mail only, in
26 clear violation of the Bankruptcy Rules and due process in chapter 11. *See* Weisbrot Decl. at 24:2-4.
While the Debtors' Notice Procedures contemplate providing notice via email to any of their Customers
that have signed up for electronic billing that notice would be in addition to, and not in lieu of, notice by
mail. *See* Debtors' Bar Date Motion at 25:6-9.

27 ¹¹ As set forth in the Bar Date Motion, "Unknown Wildfire Claimants" means holders of Wildfire
28 Claims that, as of the Petition Date, had not commenced actions against the Debtors or provided actual
notice to the Debtors of their intention to commence actions against the Debtors

1 W.D.N.C.); *In re Maxus Energy Corp.*, No. 16-11501 (CSS) (Bankr. D. Del); *In re Montreal Maine &*
2 *Atlantic Railway, Ltd.*, No. 13-10670 (Bankr. D. ME); *Altegrity, Inc.*, No. 15-10226 (LSS) (Bankr. D.
3 Del); *In re Old FENM Inc. (f.k.a Fresh & Easy Neighborhood Market, Inc.)*, No. 13-12569 (KJC) (Bankr.
4 D. Del.); *In re Pacific Sunwear of California, Inc.*, No. 16-10882 (LSS) (Bankr. D. Del.). See Supp.
5 Waisman Decl. at ¶3

6 Moreover, Prime Clerk is the single most experienced bankruptcy claims and noticing agent in
7 the energy sector. See *id.* Prime Clerk has been appointed to serve in 59 bankruptcy cases in the energy
8 field with an aggregate of nearly one million creditors and \$177.4 billion in total liabilities¹² and has
9 designed and implemented many of the largest and most complicated noticing plans in chapter 11
10 history.¹³

11 In addition, Prime Clerk's noticing efforts in these Chapter 11 Cases have been, and will continue
12 to be, complemented by Jeanne C. Finegan, APR, who is an expert in both chapter 11 and class action
13 noticing with more than thirty (30) years of communications and advertising experience. Ms. Finegan
14 is one of the only nationally recognized experts in the field of noticing in *both* bankruptcy and class
15 actions. See Finegan Decl. at ¶3. In her declaration, Ms. Finegan confirms that the Debtors' Notice
16 Procedures, and in particular the Supplemental Notice Plan, are broad, multi-faceted, and designed to
17 have the greatest possible reach to all creditors and parties in interest, including those who may have
18 relocated as a result of the Northern California Wildfires. Ms. Finegan further attests that it is her belief

19 _____
20 ¹² See, e.g., *Breitbart Energy Partners* (Bankr. S.D.N.Y. May 15, 2016); *SunEdison, Inc.* (Bankr.
21 S.D.N.Y. April 21, 2016); *SandRidge Energy, Inc.* (Bankr. S.D. Tex. May 16, 2016); *Linn Energy, LLC*
22 *Solutions Corp.* (Bankr. N.D. Ohio March 31, 2018); *Arch Coal, Inc.* (Bankr. E.D. Mo. Jan. 11, 2016);
Vanguard Natural Resources (Bankr. S.D. Tex. Feb. 2, 2017 and March 31, 2019); and *Patriot Coal*
Corporation (Bankr. E.D. Va. May 12, 2015).

23 ¹³ For example, in *In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del.), Prime Clerk developed
24 a unique noticing plan to provide 88 million parties with customized notices and developed a customized
25 mobile-focused digital and radio advertising campaign to provide supplemental notice to potential
26 unknown claimants in Puerto Rico and the U.S. Virgin Islands in the aftermath of Hurricane Maria. In
27 addition, in *In re Commonwealth of Puerto Rico*, No. 17-03283 (LTS) (Bankr. P.R.), Prime Clerk
28 coordinated and executed multiple mailings of various legal notices in two languages to millions of
potential creditors and coordinated radio advertisements with information pertaining to the bar date and
extended bar date. In addition to undertaking mass noticing efforts, Prime Clerk established multiple
claim filing centers staffed with multilingual consultants outside of the continental U.S. and collected
and processed over 160,000 claims. Prime Clerk's plan was specifically tailored to address claimants
who had lost their homes as a result of hurricane damages. See *id.*

1 that the Debtors' Supplemental Notice Plan is one of the largest and most comprehensive notice and
2 media campaigns proposed in bankruptcy history and, furthermore, the plan, as refined, employs the
3 appropriate budget to achieve the optimal reach and frequency for noticing. *See id.* at ¶6.

4 As described at length in the Finegan Declaration, the Debtors' Supplemental Notice Plan was
5 designed utilizing methodologies and communication principles accepted by the advertising industry
6 and embraced by courts in the United States for legal noticing and represents the most effective and
7 comprehensive noticing plan in any bankruptcy or class action case ever. These methodologies and
8 principles include, without limitation:

- 9 • Syndicated Media Research: The Debtors' Supplemental Notice Plan was formulated
10 using a combination of well-established principles of communication and syndicated
11 media research data provided by GfK Mediamark Research and Intelligence, LLC¹⁴
12 ("MRI") online measurement currency comScore¹⁵, and Nielsen¹⁶ among others, which
13 provide data on media consumption habits and audience delivery verification of the
14 potentially affected population. These data resources are used by advertising agencies
15 nationwide as the basis to select the most appropriate media to reach specific target
16 audiences. These research reports are instrumental in the selection of media channels and
17 outlets for determining the estimated net audience reached through the Supplemental
18 Notice Plan.
- 19 • Secondary Population Research: In addition to the media research data, various
20 secondary sources were studied to ensure that the Debtors' Supplemental Notice Plan is
21 appropriately targeted and optimized. These sources include the U.S. Census data and
22 California Fire Commission data for population demographics and characteristics.
23 According to these sources, the vast majority (73%) of California residents who own
24 homes are over the age of 35. Use of this information will ensure that the noticing plan
25 breaks-up target populations by age (as discussed below) and appropriate media will be

20 ¹⁴ GfK MRI's *Survey of the American Consumer*® is the industry standard for magazine audience ratings
21 in the U.S. and is used in the majority of media and marketing agencies in the country. MRI provides
22 comprehensive reports on demographic, lifestyle, product usage and media exposure.
<http://www.mr.gfk.com/>. *See* Finegan Decl. at n.14.

23 ¹⁵ comScore is a global Internet information provider on which leading companies and advertising
24 agencies rely for consumer behavior insight and Internet usage data. comScore maintains a proprietary
25 database of more than 2 million consumers who have given comScore permission to monitor their
26 browsing and transaction behavior, including online and offline purchasing. This data includes and fuses
27 1st party, (website data), second party (data shared by websites for marketing purposes) and 3rd party
28 data, tied to offline purchasing behavior. www.comscore.com. *See* Finegan Decl. at .28.

¹⁶ Nielsen measures and monitors television and radio audiences and media delivery. The company
measures programming and advertising across all distribution points: network television, and radio
among others. Nielsen's ratings are used by advertisers and networks to shape the buying and selling of
advertising. www.nielsen.com. *See* Finegan Decl. at n.29.

used to ensure this population is properly targeted.

- Target Audience and Targeted Regions: A majority of Wildfire Claimants are located in six counties in four Designated Marker Areas (“DMAs”)¹⁷ in Northern California. Due to the impact of those fires, it can be expected that a percentage may have relocated to locations throughout California to other states. To account for that, the Debtors’ Supplemental Notice Plan has three tiers. The first focuses on media in the four DMAs. The second casts a wider net to include all of California as this is the most likely area for relocation. Finally, the third tier casts a nationwide net to the rest of the 49 states to ensure that people that have moved outside the state have an opportunity to be reached and file a claim. Thus, this geographical division not only efficiently reaches the DMAs and the broader State of California, it also appropriately reaches the entire nation. In addition, the Debtors are casting a wide net locally, reaching all adults who are 18 years of age and older and the Debtors are making thoughtful considerations for media selection based on three demographic clusters: 18-24, 25-44, and 45+. The purpose of this is to recognize that media use changes with age, income and education levels. This allows the media program to be highly focused by effectively reaching the right populations and reducing waste.
- Target Audience Reach and Frequency Estimates: In stark contrast to the TCC Notice Plan, the reach and frequency contemplated by the Debtors’ Supplemental Notice Plan are optimal to appropriately reach the affected target audience with an appropriate level of frequency of message delivery to generate awareness and action. As more fully detailed and explained in the Finegan Declaration, the Debtors’ Supplemental Notice Plan is reasonably calculated to reach:

Target	Reach	Frequency
Adults 18+ in the 4 DMAs	95%	8x
Adults 18+ in CA	81%	5x
Adults 18+ outside of CA and moved in the last 4 years	78%	2.3x

Finegan Decl. at ¶58.

The Debtors’ Supplemental Notice Plan far exceeds efforts to provide notice in a typical bankruptcy proceeding where publication notice is viewed as sufficient and generally consists of one or two nationally circulated newspapers. Importantly, the Debtors’ professionals have employed best-in-class advertising industry tools and technology to ensure that the Debtors’ Notice Plan provides due process to all constituents, including Known and Unknown Wildfire Claimants, and complies with Bankruptcy Rule 2002. It is also worth noting that the Debtors’ Supplemental Notice Plan exceeds best

¹⁷ DMA is a geographic area in the United States in which local television viewing is measured by Nielsen Co. The DMA data are essential for any marketer, researcher, or organization seeking to utilize standardized geographic areas within their business.

practices in the class action context, where reach range is typically between 70% to 80% with frequency levels commonly ranging between 2 to 3 times. *See* Finegan Decl. at ¶60.

In contrast, the TCC Notice Plan is critically deficient in certain aspects and excessive in others. Indeed, most material differences between the TCC Notice Plan and the Debtors' Supplemental Notice Plan relate to cost and duration. *See* Finegan Decl. at ¶46. However, although largely duplicative, the Debtors have no objection to adopting the following additional elements from the TCC Notice Plan.

- i. National Cable & Over the Top TV ("OTT"): Nationwide cable television commercials will air across multiple networks to reach those Wildfire Claimants who have moved within the last four years. The Debtors' Supplemental Notice Plan will use digital OTT video ads to match known creditors living outside of the four DMAs and serve them video ads.
- ii. Streaming Radio: A combination of both terrestrial radio and streaming radio will be used in the six (6) Metropolitan Survey Areas¹⁸ ("MSA"). 60-second ads will air on two English and two Spanish language terrestrial radio stations per market (there are no local Hispanic stations in Redding). A total of 24 local English radio stations and 10 Hispanic stations were chosen to air approximately 540 terrestrial radio ads. Streaming audio ads (digital radio played via an internet connection) will run on Pandora with shorter, 15-or 30-second ads accompanied by a digital banner ad. The digital banner ads will appear while the audio spot is playing and allow a user to click on the banner and be taken to the dedicated case website. Approximately 1 million streaming audio impressions are planned.
- iii. Out-of-Home Advertising: The Debtors will employ a mix of billboards and transit shelters. In an effort to further integrate media channels suggested by the TCC, billboards and/or transit shelters will be selected within the six affected counties to ensure increased local exposure to the Debtors' Supplemental Notice ads. Recognizing that many of these areas tend to be more rural, there are limited opportunities for transit, mall, mass transit, or even billboards.
- iv. Social Influencers: In effort to leverage the highest indexing media to the youngest creditors, the Debtors will engage the help of social media influencers to post and share information about the Wildfire Claim Bar Date on platforms such as Snapchat, Instagram and Facebook. The Debtors will identify key influencers who have significant following within the 18-24 age demographic who also have an affinity to the topic and partner with them to post appropriate content related the matter. The Debtors will also identify a larger list of social media influencers and serve them customized ads on Facebook and Instagram to make them aware that they may virally share the information with their followers.

Finegan Decl. at ¶64.

¹⁸ Geographical area defined by radio measurement company, Arbitron.

1 Taking into account the additional measures described above, the Debtors' Supplemental Notice
2 Plan is now estimated to cost approximately \$2.5 million.¹⁹ See Finegan Decl. at ¶46. In contrast, the
3 TCC is proposing to spend \$12.8 million on a supplemental notice program. See Memorandum of Points
4 and Authorities in Support of TCC Bar Date Motion [Dkt. No. 2298] at 16:23. However, the TCC fails
5 to provide any sort of meaningful cost breakdown for its plan; rather, the Court and parties in interest
6 are asked to rely on unsupported cost estimates from an agent that has no prior experience in chapter 11
7 cases.

8 As set forth in the Finegan Declaration, the robust and comprehensive outreach efforts employed
9 under the Debtors' Notice Procedures, including the Supplemental Notice Plan, reflect a particularly
10 appropriate, highly targeted, efficient and modern way to provide notice to Known and Unknown
11 Wildfire Claimants. The reach and frequency of the Debtors' Supplemental Notice Plan is estimated as
12 follows:

- 13 • 95% of adults 18 years and older with an average frequency of 8 times in the target 4
14 DMAs;
- 15 • Over 81% of California residents 18 years and older with an average frequency of 5 times;
16 and
- 17 • 78% of adults over the age of 18 nationwide who live outside California and moved
18 within the last 4 years with an average frequency of 2.3 times.

18 Finegan Decl. at ¶100.

19 Ultimately, when combined with other unmeasured notice methods (such as community
20 outreach), the overall effort will undoubtedly achieve even stronger results. The Supplemental Notice
21 Plan, with the amendments described above, will effectively and efficiently reach the targeted
22 population, without the enormous waste and resulting excessive cost found in the TCC Notice Plan.
23 Accordingly, the Debtors' Notice Procedures, including the Supplemental Notice Plan, should be
24 approved.

25
26
27
28 ¹⁹ As set forth in the Debtors' Bar Date Motion, the Debtors original estimate for the cost of the
Supplemental Notice Plan was approximately \$1.5 million - \$2.0 million.

1 **III. THE TCC'S BAR DATE MOTION SHOULD BE DENIED**

2 **a. The TCC's Proposed Bar Date and Claims Submission Process are Inefficient and**
3 **Will Unduly Delay these Chapter 11 Cases**

4 In addition to seeking to delay the Bar Date well into next year, the TCC Bar Date Motion seeks
5 approval of a bifurcated claims process and inappropriate procedures—a path that will significantly
6 delay the administration of these Chapter 11 Cases, the chapter 11 plan process, and any distribution to
7 the claimants the TCC represents.

8 Moreover, the TCC, in an attempt to frustrate any effort by the Debtors (or others) to seek
9 discovery to validate or assess Wildfire Claims, has asked the Court to preclude *any and all* objections
10 to Wildfire Claims until after the Bar Date has passed. *See* TCC Bar Date Memo. at § IV(D)(j). There
11 is no basis for such a restriction and it should be summarily rejected.

12 Furthermore, as set forth in detail in the Debtors' objection filed contemporaneously herewith,
13 the TCC's proposed retention of Angeion as its additional noticing agent will only lead to further delay,
14 is not necessary and, in any event, Angeion is not qualified. As set forth in the Supplemental
15 Declarations, upon information and belief, Angeion has no prior experience serving as a claims or
16 noticing agent or in any other capacity in chapter 11 cases and its prior experience in class action cases
17 is overstated. *See* Supp. Waisman Decl. at ¶13 and Finegan Decl. at ¶20. Furthermore, upon information
18 and belief, unlike Prime Clerk, the Court-approved noticing agent in these Chapter 11 Cases, Angeion
19 is not on the list of approved claims and noticing firms promulgated and published by the Clerks of the
20 Court for the Southern District of New York and the District of Delaware, which other Bankruptcy Court
21 jurisdictions rely on to determine whether a particular firm is qualified and trusted to serve as a claims
22 and noticing agent.²⁰ *See* Supp. Waisman Decl. at ¶13. As set forth in the Supplemental Waisman
23 Declaration, based on prior experience, the process of securing approval of the Clerks for either of these
24 two Districts likely would take Angeion weeks, if not longer, to complete. Accordingly, Angeion is not
25 even authorized at this time to act as a noticing agent for the parties the TCC seeks to serve and the
26 TCC's Notice Plan will only result in further delays to the administration of these Chapter 11 Cases.

27 ²⁰ *See* Bankr. S.D.N.Y., "Claims Agents" (<http://www.nysb.uscourts.gov/claims-agents>) and Bankr. D.
28 Del., "Delaware Bankruptcy Courts – Claims Agencies" ([https://www.deb.uscourts.gov//claims-](https://www.deb.uscourts.gov//claims-agency-list)
[agency-list](https://www.deb.uscourts.gov//claims-agency-list)).

1 **b. The TCC’s Direct Notice Plan Fails to Comply with Applicable Law**

2 As set forth above, the TCC proposes to cut costs by sending notice of the Bar Date to
3 approximately two million Utility customers via their monthly emailed statements. *See* Weisbrot Decl.
4 at 25:3-4. Regardless of the fact that the process of preparing and approving a bill insert typically
5 requires months of lead time from a process perspective and would result in significant delays, to do so
6 would blatantly disregard Bankruptcy Rule 2002. It is a well-known principle and straightforward
7 provision of the Bankruptcy Rules that direct notice—meaning notice by physical mail—must be
8 provided to all known claimants. *See, e.g., In re Circuit City Stores, Inc.*, No. 08-35653, 2010 WL
9 2208014, at *7 (Bankr. E.D. Va. May 28, 2010) (“Known creditors must receive actual notice by mail
10 of the claims bar date.”); *In re Freedom Commc’ns Holdings, Inc.*, 472 B.R. 257, 261 (Bankr. D. Del.
11 2012) (“Known creditors must generally be provided actual written notice of a debtor’s bankruptcy filing
12 and the bar claims date in the case.”). In fact, Bankruptcy Rule 2002 specifically states, “the clerk, or
13 some other person as the court may direct, shall give . . . all creditors and indenture trustees at least 21
14 days’ notice *by mail* of . . . the time fixed for filing proofs of claims pursuant to Rule 3003(c)”. Fed. R.
15 Bankr. P. 2002(a)(7) (emphasis provided).

16 Despite this well-known principle and straightforward provision of the Bankruptcy Rules,
17 Angeion’s proposed noticing plan, without any precedent or support, dispenses with any physical
18 mailing to some two million potential known claimants. Accordingly, the TCC Bar Date Motion should
19 be denied.

20 **c. The TCC’s Supplemental Notice Plan is Critically Flawed and Misstates Key**
21 **Aspects of their Proposal**

22 The TCC Notice Plan, as described in the Weisbrot Declaration, is critically flawed, contains
23 numerous misstatements regarding certain aspects of the plan, and relies on inaccurate calculations. As
24 described in detail in the Finegan Declaration, the following are a few of the critical errors and
25 misstatements from the TCC’s Notice Plan:

- 26 i. **The TCC television plan does not reach all affected MSAs and is inaccurately**
27 **planned.** Mr. Weisbrot asserts that the TCC’s Notice Plan will deliver audience in each
28 of DMAs in California: Chico-Reading, San Francisco-Oakland-San Jose, Sacramento-
Modesto-Stockton and Eureka. Weisbrot Decl. at 16:6-13. However, only two of the

four DMAs (Chico and San Francisco) are identified for television in Exhibit E to the Weisbrot Declaration, which identifies the exact media the TCC is proposing to utilize in each DMA. Further, without any supporting rationale, the TCC Notice Plan adds the Los Angeles market. Failure to provide televised notice in two of the DMAs cuts out half of the targeted population, and providing televised notice in Los Angeles is unnecessary and a significant waste of resources. *See* Finegan Decl. at ¶30.

- ii. **The TCC radio plan does not reach all affected MSAs and is inaccurately planned.** Similar to their television plan, the radio plan set forth by the TCC and Mr. Weisbrot does not reach all affected MSAs. The radio plan does not include Stockton or Modesto, and again inexplicably includes Los Angeles. *See id.* at ¶31.
- iii. **The TCC Notice Plan lists “:60” spots for radio and National Public Radio (NPR) stations.** NPR does not accept advertising, only sponsorships. *See id.* at ¶32.
- iv. **Local reach for both television and radio is likely miscalculated.** Mr. Weisbrot and the TCC project that “approximately three quarters of the residents of the four DMAs will see a video ad, on average ten times each.” Weisbrot at 27:19-20. In reality, as noted above, residents of two of the four TV DMAs and two of the six MSAs may not see or hear commercials at all. *See* Finegan Decl. at ¶33.
- v. **The TCC Notice Plan emphasizes Los Angeles and San Diego without any rationale for their inclusion.** Angeion and the TCC propose to include Out-of-Home advertising (which includes billboards and transit shelters in Los Angeles and San Diego). It should be noted that Out-of-Home is hyper local, *only* reaching people who are physically at the posted locations of the billboards/transit stops. Without evidence to suggest that people affected by the Northern California Wildfires have moved to the exact locations where the Out-of-Home media is visible, there is no reasonable justification for the use of Out-of-Home in these areas and they could be more effectively reached through other channels. *See id.* at ¶34.
- vi. **Angeion and Weisbrot have provided no assurances that they will actively monitor and transparently report on ad fraud detected in their proffered outreach.** Ad fraud, (counterfeit impressions, fake sites, domain spoofing) and bots are an ever-present reality in the digital environment, silently stealing impressions from advertising budgets. While Mr. Weisbrot mentions including Integral Ad Science, he makes no reference to other necessary steps he should take to identify, mitigate and transparently report the ad fraud detected. *See* Weisbrot Decl. at 35:1-4; Finegan Decl. at ¶35
- vii. **The TCC Notice Plan falsely claims to include Spanish radio.** As a part of the TCC Notice Plan, Mr. Weisbrot and Angeion promise traditional and terrestrial broadcasting in the Spanish language. Yet none of the radio stations listed in Exhibit E to the Weisbrot Declaration are Spanish language stations. Failure to include media in the Spanish language is a critical misstep as 38.6% of Californians are of Spanish, Hispanic or Latino descent and 21% speak primarily Spanish at home. *See* Finegan Decl. at ¶36.
- viii. **The TCC Notice Plan proposes to include Cajun radio; there is no Cajun population in Northern California.** For some inexplicable reason, the TCC Notice Plan includes

1 Cajun radio stations in its media plan. *See* Weisbrot Decl. at 63:2. Putting aside the fact
2 that there are no Cajun radio stations in California, there is no justification for Cajun
3 stations in this matter as there is no evidence that there is any significant Cajun
population in Northern California. *See* Finegan Decl. at ¶37.

4 The many examples of errors, mischaracterizations, and misstatements in the TCC's pleadings
5 evidence lack of knowledge and experience. Further, as discussed below, the TCC Notice Plan would
6 waste millions of dollars of estate resources by inaccurately targeting inappropriate audiences,
7 oversaturating non-essential noticing elements, and utilizing unprecedented and spurious noticing
8 frequency rates.

9 **d. The TCC Notice Plan is Excessive and Will Result in Diminishing Returns**

10 In addition to the critical flaws and misstatements set forth above, the budget for the supplemental
11 notice plan proposed by the TCC, Angeion, and Mr. Weisbrot is excessive and wasteful due, in part, to
12 its unnecessary frequency levels, or opportunities to see the notice. As set forth in the Finegan
13 Declaration, in advertising, the term "Reach" refers to the estimated percentage of the unduplicated
14 audience exposed to the campaign, and "Frequency" refers to how many times, on average, the target
15 audience had the opportunity to see the message. These metrics are used by advertising and
16 communications firms worldwide and, while not typically utilized in bankruptcy matters, are the bedrock
17 for determining adequacy of notice in class actions. *See* Finegan Decl. at ¶39.

18 The Weisbrot Declaration claims that 80% of all adults residing in the State of California
19 (approximately 39.56 million) will see one of Angeion's notices **on average 28 times**. *See* Weisbrot
20 Decl. at 27:16-26. In the targeted regions, he proposes to have approximately 95% of the target audience
21 (9.76 million) see a notice nearly **52 times**. *See* Weisbrot Decl. at 27:6-12. These proposed frequencies
22 are unprecedented and beyond what any bankruptcy or class action case has *ever* employed. For context,
23 even the largest, most recent class action campaigns, which had similar local, regional and national
24 outreach did not employ such frequency levels. *See* Finegan Decl. at ¶40.

25 The Frequency proposed by Mr. Weisbrot and Angeion is not only contrary to all guidance and
26 practice and without precedent in class action and bankruptcy, but, as set forth in the Finegan
27
28

1 Declaration, the enormous over-saturation proposed by Angeion and Weisbrot has also been proven to
2 have negative results in advertizing and marketing, more generally. *See id.* at ¶41.

3 Further, the outreach contemplated by the TCC Notice Plan lacks refined audience targeting. For
4 example, as discussed in the Finegan Declaration, there is no need in this matter to target all adults 18
5 years of age and older nationwide, as the TCC has proposed. It is more efficient to target those adults
6 who are over the age of 18 who have moved out of California from 2015 to present, which is the affected
7 period for the Bar Date Notices. Accordingly, once the audience targeting is refined, then the media
8 selection becomes more efficient with less waste. *See id.* at ¶44. This is another reason, the TCC Notice
9 Plan is excessive and wasteful.

10 The TCC Notice Plan sustains these high frequency levels over a course of 7 months. This is
11 another wasteful approach. The same results can be accomplished over the ninety-five (95) days
12 contemplated by the Debtors' Supplemental Notice Plan. *See id.* at ¶43. In fact, this timing is consistent
13 with numerous, high-profile, high stakes bankruptcies and class actions, including those mentioned
14 above and in the Finegan Declaration, *i.e.* Takata, Deep Water Horizon, etc.

15 The TCC Notice Plan is deficient (*see* above) in some aspects and excessive in others that may
16 be detrimental to the principle objectives of these Chapter 11 Cases. The budget proposed by the TCC,
17 Angeion, and Mr. Weisbrot for supplemental noticing is excessive, without precedent in bankruptcy or
18 class action, and wasteful. However, the Debtors' nationwide outreach effort is reasonably calculated
19 to reach nearly 80% of the target audience nationwide—which is not the case with the TCC Notice
20 Plan—because the Debtors' Supplemental Notice Plan is tactically superior to the TCC Notice Plan in
21 every way. As Ms. Finegan states, the use of estate funds to implement and execute the TCC's Notice
22 Plan would be nothing short of wasteful.

23 **IV. THE TCC'S EXPERTS' DECLARATIONS MUST BE STRICKEN**

24 Setting aside the substantive deficiencies of the Weisbrot and Dion Declarations (and the flawed
25 notice plans they support), the declarations themselves must be stricken simply because the TCC failed
26 to make Messrs. Weisbrot and Dion available for depositions prior to the hearing on the Bar Date Motion.
27 As discussed above, Messrs. Weisbrot and Dion are not fact witnesses; they are expert witnesses
28

1 providing opinions that the Bar Date should not be set until January. As experts “whose opinions may
2 be presented at trial,” Mr. Weisbrot and Mr. Dion are subject to Rule 26(b)(4)(A) of the Federal Rules
3 of Civil Procedure, which gives the Debtors the right to depose them prior to trial (or in this case, prior
4 to the Bar Date Motion hearing). Fed. R. Civ. P. 26(b)(4)(A). Absent an opportunity to meaningfully
5 explore the credentials of the proffered experts and test the testimony that will be presented at the
6 hearing, the Debtors respectfully request that the Weisbrot and Dion Declarations be set aside.

7 Moreover, it should be noted that the TCC had ample opportunity to make its witnesses available
8 for depositions prior to the Bar Date Motion hearing. As the TCC is well aware, the June 26, 2019
9 hearing date for the Bar Date Motion was set by this Court back on May 31, 2019 by docket text order.
10 Shortly thereafter, on June 10, 2019, the Debtors timely sent notice for the depositions of both Messrs.
11 Weisbrot and Dion, giving the TCC plenty of time to make its declarants available to be deposed *before*
12 the hearing. Despite the clear and timely notice that the Debtors intended to depose the TCC’s declarants,
13 the TCC failed to make either of its declarants available for depositions until July 8 – 11, 2019 – *nearly*
14 *two weeks after* the hearing for the Bar Date Motion, rendering their depositions useless for purposes of
15 the Bar Date Motion.

16 Given the TCC’s failure to make its expert witnesses available prior to the Bar Date Motion
17 hearing, and the prejudice facing the Debtors who will not be able to meaningfully test the testimony of
18 the TCC’s expert witnesses prior to their presentations at trial, the Debtors respectfully seek to have the
19 Weisbrot and Dion Declarations stricken from the record.

20 **V. CONCLUSION**

21 As set forth above, the Debtors are proposing robust and far-reaching Notice Procedures that
22 provide more than adequate notice to known and unknown creditors of the deadline to file Proofs of
23 Claim in these Chapter 11 Cases. In connection with the implementation of this unprecedented notice
24 plan, the Debtors have retained, and Clerk of the Court has approved, a proven and established noticing
25 firm with extensive experience implementing complex noticing plans in chapter 11 cases, including in
26 cases involving class actions and mass torts. In contrast, the TCC Notice Plan is wasteful, duplicative,
27 and will only result in further delays to creditor distributions, including Wildfire Claimants.

1 Accordingly, for the reasons set forth above and in the Bar Date Motion, the Debtors request the
2 Court (i) approve the Bar Date Motion and overrule the Objections, (ii) deny approval of the TCC Bar
3 Date Motion, and (iii) grant such other relief to the Debtors as is necessary and appropriate.

4
5 Dated: June 19, 2019

6 **WEIL, GOTSHAL & MANGES LLP**

7 **KELLER & BENVENUTTI LLP**

8
9 By: /s/ Stephen Karotkin
Stephen Karotkin

10 *Attorneys for Debtors*
11 *and Debtors in Possession*